



U.S. Department of Justice

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*Judiciary Center  
601 D St., N.W.  
Washington, D.C. 20530*

December 9, 2022

Mark J. Langer, Clerk  
United States Court of Appeals  
for the District of Columbia Circuit  
333 Constitution Avenue, N.W., Room 5423  
Washington, D.C. 20001-2866

Re: *United States v. Theodore Douglas*, No. 21-3032  
*Oral argument held on December 9, 2022,*  
*before Judges Wilkins, Randolph and Rogers*

Dear Mr. Langer:

Pursuant to Federal Rule of Appellate Procedure 28(j), we wish to advise the Court of supplemental authority relevant to this appeal.

During oral argument today, there were questions about the undercover officer's statement in the radio run to "check that bookbag," an issue not addressed in the briefing. The undersigned counsel tentatively stated that he believed that that statement came after the disputed frisk.

The body-worn camera and radio run bear out that representation. The district court found that "Officer Poupart lightly touched the back of Douglas's jacket just a few times, with the total sequence of events lasting only a few seconds, before Officer Poupart recognized the presence of a firearm," and "Officer Poupart testified that the shape and weight of the object made it immediately apparent that he was touching a firearm" (A181) (citing Gov't Ex. 4; A378-80). Based on the time stamps in Officer Poupart's body-worn camera (Government Exhibit 4), that frisk concluded by 19:03:20 (see Gov't Br. 53-54). The undercover officer's statement to "check that bookbag" came a minute and a half after the

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initial frisk, at approximately 19:04:47-19:04:49 on Government Exhibit 4. *See also* Gov't Ex. 3 at 9:12-9:14 (radio run). Although the undercover officer earlier informed the other officers that a suspect had a "bookbag on underneath his coat" (Gov't Ex. 4 at 19:02:54-19:02:56; Gov't Ex. 3 at 7:59-8:01) the undercover officer did not at that time say to "check that backpack"; instead, the undercover officer appeared to be referring to the bookbag to help the other officers identify the suspect.

We respectfully request that this letter be brought to the attention of the panel assigned to this case.

Sincerely,

/s/ Eric Hansford  
Eric Hansford  
Assistant United States Attorney

cc (via CM/ECF):  
Tony Axi, Jr., Esq.